

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>UNITED STATES OF AMERICA,</b>	:	
	:	
<b>Plaintiff,</b>	:	<b>Case No: 2:24-cr-144</b>
	:	
<b>vs.</b>	:	<b>JUDGE GRAHAM</b>
	:	
<b>AMY SMART</b>	:	
	:	
<b>Defendant.</b>	:	

**GOVERNMENT’S SENTENCING MEMORANDUM**

On October 16, 2024, pursuant to a Rule 11(c)(1)(C) plea agreement, Defendant Amy Smart pled guilty to Count One of a Bill of Information charging her with false statements relating to health care matters in violation of 18 U.S.C. 1035.

Pursuant to the Rule 11(c)(1)(C) plea agreement, the parties are recommending that the following sentencing guideline provisions are applicable to the instant case: 1) Pursuant to Guidelines §2B1.1 (a) the base offense level for Count 1 is 6; 2) Pursuant to Guidelines §2B1.1(b)(1)(G), the loss amount for Count 1 is between \$250,000 and \$550,000, resulting in an increase of 12 levels, for a base offense level of 18. (R. 3, Plea Agreement, PAGEID# 5, ¶ 8) The parties agree to recommend that no other U.S.S.G. enhancements are applicable in this instance (Id.) The parties further agree to recommend that the defendant serve a term of probation, the length and conditions to be determined by the Court, and that defendant pay restitution in the amount of \$345,093 to the victim health care benefit program, Ohio Medicaid. (Id., PAGEID #5 ¶ 10a, #6 ¶ 9) The defendant also agrees to voluntarily enter a permanent exclusion order from participating in any federal or Ohio health care benefit program. (Id, PAGEID# 6 ¶ 10d.) Finally, the parties agree that if the defendant continues to comply with the

terms of the plea agreement, she may be entitled to a three-level reduction for acceptance of responsibility pursuant to Guidelines §3E1.1(a) & (b). (Id, PAGEID # 6 ¶ 9)

In the Final Pre-sentence Investigative Report (PSR), the Probation Department calculated the defendant's Sentencing Guidelines at a Total Offense Level 17, Criminal History Category III, with a Guideline Range of 30-37 months (R. 19, PSR PAGEID# 26).<sup>1</sup> The Probation Department is recommending a \$10,000 fine be imposed. (Id). The defendant objects to the Probation Department's \$10,000 fine recommendation. Because the parties entered into a binding plea agreement that contained sentencing recommendations that does not include the imposition of a fine, the United is recommending that a fine not be imposed.

#### **I. SENTENCING FACTORS—18 U.S.C. § 3553(a).**

By agreeing to a specific sentence in a Rule 11(c)(1)(C) plea agreement, both the government and the defendant waived their respective rights to have this Court sentence the defendant pursuant to the advisory guideline range and §3553(a) factors. *United States v. Perez*, 464 Fed. Appx. 467, 469 (6th Cir. 2012). Consequently, a discussion of these factors is unnecessary to arrive at a sentence that is sufficient, but not greater than necessary, to satisfy Congress' sentencing mandate.

Given that the defendant will be permanently excluded from participating or being associated with any government health care benefit program medical provider, and therefore prevented from committing fraud of this nature in the future, the United States believes that a term of probation and payment of restitution in the amount of \$345,093 to Ohio Medicaid will be sufficient but not greater than necessary to satisfy Congress' sentencing mandate.

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<sup>1</sup> The Probation Department included a two-level enhancement that the parties are not recommending for abuse of a position in trust pursuant to U.S.S.G. §3B1.3.

## II. CONCLUSION.

The Government herein respectfully requests this Court to accept the binding 11(c)(1)(C) plea agreement and impose a term of probation, restitution in the amount of \$345,093 and order the defendant to honor her agreement to enter a consent order with the Centers for Medicare and Medicaid and Ohio Medicaid to be permanently excluded from participating in any federal or Ohio health care benefit program.

KELLY A. NORRIS  
ACTING UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Government's Sentencing Memorandum was served this 17<sup>th</sup> day of March, 2025, upon all persons listed on the Court's ECF system for this case.

s/Kenneth F. Affeldt  
KENNETH F. AFFELDT (0052128)  
Assistant United States Attorney